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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/496,893	02/02/2000	Stephen J. Brown	7553.00030 / 00-0220	6810
60683 7590 07/20/2010 HEALTH HERO NETWORK, INC. 2400 GENG ROAD, SUITE 200 PALO ALTO, CA 94303				
EXAMINER				
SMITH, CAROLYN L				
ART UNIT		PAPER NUMBER		
1631				
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07/20/2010		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

09/496,893

**Applicant(s)**

BROWN, STEPHEN J.

**Examiner**

Carolyn Smith

**Art Unit**

1631

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 14 May 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 83, 85, 86, 88-90, 92-94 and 96-103 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 83, 85-86, 88-90, 92-94, and 96-103 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(c), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(c) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicants' submissions, filed 5/14/10 and 4/30/10, have been entered.

Amended claims 83, 85, 90, 94, 97, new claims 101-103, and cancelled claims 1-82, 84, 87, 91, 95, filed 4/30/10, are acknowledged.

Claims herein under examination are 83, 85-86, 88-90, 92-94, and 96-103.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 83, 85-86, 88-90, 92-94, and 96-103 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lapointe et al. (US 6,678,669) in view of Portwood et al. (US 5,950,630).

Lapointe et al. describe a method and system for identifying new markers for disease to design new tests and improve the sensitivity and specificity of tests as well as medical diagnostic tests that generate groups of individuals useful in researching disease influence in individuals (abstract; col. 1, last paragraph to col. 2, first paragraph; col. 3, last two paragraphs to col. 4, first paragraph; col. 5, last paragraph to col. 6, last paragraph; col. 20, third paragraph; claim 38) which represents a method and system for generating/identifying groups of individuals useful in researching influence of a disease (as stated in the preambles of instant claims 83, 90, 94). Lapointe et al. describe collecting observation by examining and querying a group of test patients in whom the medical condition is known (claim 38; col. 6, fourth paragraph) which represents selecting individuals having a risk factor for a disease, as stated in instant claim 83. Lapointe et al. describe the method and system are computer-based with a consensus of networks and several processors involving input interface screen and inputting patient information (claims 1, 3; col. 2, first paragraph; col. 6, fourth paragraph; col. 9, second paragraph; col. 10, lines 60-62; col. 84, second to third paragraph; Figure 11), as well as a computer connectable with a monitoring device that monitor pulse rate or blood pressure (col. 11, seventh paragraph; col. 12, seventh paragraph; col. 15, seventh paragraph) with the system adapting to the particular environment (col. 6, last paragraph) which represents providing a communications apparatus (as stated in instant claim 83, 90), a communication network (as stated in instant claims 90, 94), a communication apparatus connectable with a monitoring device (as stated in instant claim 88, 94) involving blood pressure and pulse rate (as stated in instant claims 89, 94, 96). Lapointe et al. describe sending queries to each individual, for example "Do you smoke?" and "How many packs per day do you smoke?", supplied in a computer-readable form to a system operating on a

computer (instant claims 3, 38, 167; col. 15, seventh paragraph; col. 30, line 35 to col. ) and using a computer script program (col. 89-239; Figures 11 and 13) which represents presenting queries to each individual through an apparatus (as stated in instant claim 83, 94) and script-based queries (as stated in instant claim 90), a computer program (as stated in instant claim 85), and queries related to behavior as well as communicate environmental information (i.e. smoking environment) (as stated in instant claims 101-103). Lapointe et al. describe answers to questions, collecting input data/responses communicating information about the individuals, storing patient data/responses in a database and further train systems to develop systems that are adapted to a particular genetic population, inputting additional data (claims 38, 116, 167, 212; col. 6, fourth and last paragraphs; col. 9, second paragraph; col. 32, second paragraph) which represents receiving and storing responses of each individual, as stated in instant claims 83, 90. Lapointe et al. describe categorizing observations and defining similar groups, categorizing responses from patient historical questionnaires, and categorizing women into different classes (claims 38, 52; Figure 4; col. 30, lines 45-46; col. 14, fifth paragraph; col. 15, fourth and fifth paragraphs) and categorizing individuals via identifying the disease state or condition of a patient as well as adapting systems for a particular genetic population (claim 38, col. 6, second and last paragraphs) and diabetes (col. 9, third paragraph) which represents defining a plurality of groups including phenotypic classifications. Lapointe et al. describe before, during or after collecting observations from a group of test patients, performing biochemical tests on at least one test patient and categorizing them into a set of candidate variables and providing biochemical test results for all or a subset of patients for whom the patient data are known with biochemical tests including bioassays and collecting genetic history of a patient and using genetic algorithms

(claims 60, 116; col. 22, second paragraph; col. 25, fourth paragraph) using a genetic algorithm and NeuroGenetic Optimizer and Knowledge discovery in data (KDD) which identifies relationships among variables as well as identifying variables and sets thereof ranking variables and finding correlations (col. 13, last paragraph; col. 7, third paragraph to col. 8, first paragraph; col. 18, lines 17-67; col. 20, third and fifth paragraphs; col. 22, second paragraph), which represents receiving and comparing genotype information, as stated in instant claims 83, 90, 92, 94, 97. Lapointe et al. describe developing systems for a particular genetic population, identifying subsets of relevant variables and outputting information (col. 6, fourth to sixth paragraphs; col. 8, second paragraph; col. 13, third paragraph; col. 27, third paragraph; claims 37, 38, 60, 116) including determining relationships and differences between variables (col. 17, second paragraph to col. 18, last paragraph; col. 29, second paragraph to col. 42, line 35; col. 49, fourth paragraph to col. 56, line 50; col. 83, second paragraph to col. 88, last paragraph) which represents generating a report that represents a subset of genotype information associated with each group wherein differences in said genotype information between said groups is expressed in terms of phenotypic classifications, as stated in instant claims 83, 90, 94. Lapointe et al. describe categorizing individuals via identifying the disease state or condition of a patient as well as adapting systems for a particular genetic population (claim 38, col. 6, second and last paragraphs) and diabetes (col. 9, third paragraph) which represents categorizing individuals into groups by risk factor or disease progression including diabetes, as stated in instant claims 86, 90, 92, 93, 94, 97, 98, 99, 100, 101, 102. Lapointe et al. do not describe transmitting a computer program containing queries to a communication apparatus, wherein the program causes the apparatus to present queries and collect responses to said queries (instant claim 83), a server

transmitting a computer program containing queries to a communication apparatus, the program causing the apparatus to present queries to the individual and collect responses (instant claims 90 and 94).

Portwood et al. describe utilizing computer and electronic communication systems that transmits a computer program (i.e. communication software program) containing queries to a communication apparatus, wherein the program causes the apparatus to present queries and collect responses to said queries as well as a server (Figures 1, 2, 4; col. 5, second to fourth paragraphs; col. 6, third and fourth paragraphs; col. 8, last paragraph to col. 9, fourth paragraph; col. 16, last 2 paragraphs to col. 17, second paragraph).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to transmit a computer program containing queries to a communication apparatus and collect responses as taught by Portwood et al. in the method and system of Lapointe et al. wherein the motivation would have been to monitor medication usage as well as patient wellness permitting the patient contact regardless of where the patient may be located at that moment, as stated by Portwood et al. (col. 1, fourth paragraph and last paragraph to col. 2, first paragraph).

Thus, Lapointe et al. in view of Portwood et al. make obvious the instant invention.

Applicant summarizes Lapointe et al. and the instant invention. Applicant argues that Lapointe et al. do not describe transmitting a computer program to a communications apparatus. This statement is found unpersuasive as Portwood et al. describe this limitation (Figures 1, 2, 4; col. 5, second to fourth paragraphs; col. 6, third and fourth paragraphs; col. 8, last paragraph to

col. 9, fourth paragraph; col. 16, last 2 paragraphs to col. 17, second paragraph). Applicant's arguments are deemed unpersuasive for the reasons given above.

#### ***Other prior art***

Although not being used as prior art, the following reference has been made of record: Herren et al. (US 6,108, 635) disclose a method and integrated disease information system with an interface involving querying, receiving user input of biological parameters, projecting disease progression outcomes taking risk factors into account for various groups, and analyzing for each group of patient types based on standard categories of factors.

#### ***Conclusion***

No claim is allowed.

Papers related to this application may be submitted to Technical Center 1600 by facsimile transmission. Papers should be faxed to Technical Center 1600 via the PTO Fax Center. The faxing of such papers must conform to the notices published in the Official Gazette, 1096 OG 30 (November 15, 1988), 1156 OG 61 (November 16, 1993), and 1157 OG 94 (December 28, 1993) (See 37 CFR §1.6(d)). The Central Fax Center number for official correspondence is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished



applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carolyn Smith, whose telephone number is (571) 272-0721. The examiner can normally be reached Monday through Thursday from 8 A.M. to 6:30 P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Marjorie Moran, can be reached on (571) 272-0720.

July 14, 2010

/Carolyn Smith/  
Primary Examiner  
AU 1631